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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
DEC 07 2022  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Case No.: 2:22-CR-69-TOR

Plaintiff,

Plea Agreement

v.

KEVIN JOHN AUDETT,  
Defendant.

Plaintiff United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Earl A. Hicks, Assistant United States Attorney for the Eastern District of Washington, and Defendant KEVIN JOHN AUDETT (“Defendant”), both individually and by and through Defendant’s counsel, Christina Wong, agree to the following Plea Agreement.

1. Guilty Plea and Maximum Statutory Penalties

Defendant agrees to enter a plea of guilty to the Indictment filed on June 7, 2022, which charges Defendant with Felon in Possession of Ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), a Class B felony.

Defendant understands that the following potential penalties apply:

- a. a term of imprisonment of not more than 10 years;
- b. a term of supervised release of not more than 3 years;

- 1                   c.     a fine of up to \$250.000; and
- 2                   d.     a \$100 special penalty assessment.

3                  2. Supervised Release

4                  Defendant understands that if Defendant violates any condition of  
5                  Defendant's supervised release, the Court may revoke Defendant's term of  
6                  supervised release, and require Defendant to serve in prison all or part of the term  
7                  of supervised release authorized by statute for the offense that resulted in such term  
8                  of supervised release without credit for time previously served on postrelease  
9                  supervision, up to the following terms:

- 10                 a.     5 years in prison if the offense that resulted in the term of  
11                      Supervised Release is a class A felony,
- 12                 b.     3 years in prison if the offense that resulted in the term of  
13                      Supervised Release is a class B felony, and/or
- 14                 c.     2 years in prison if the offense that resulted in the term of  
15                      Supervised Release is a class C felony.

16                  Accordingly, Defendant understands that if Defendant commits one or more  
17                  violations of supervised release, Defendant could serve a total term of  
18                  incarceration greater than the maximum sentence authorized by statute for  
19                  Defendant's offense or offenses of conviction.

20                  3. The Court is Not a Party to this Plea Agreement

21                  The Court is not a party to this Plea Agreement and may accept or reject it.  
22                  Defendant acknowledges that no promises of any type have been made to  
23                  Defendant with respect to the sentence the Court will impose in this matter.

24                  Defendant understands the following:

- 25                 a.     sentencing is a matter solely within the discretion of the Court;
- 26                 b.     the Court is under no obligation to accept any recommendations  
27                      made by the United States or Defendant;

- 1           c. the Court will obtain an independent report and sentencing
- 2           recommendation from the United States Probation Office;
- 3           d. the Court may exercise its discretion to impose any sentence it
- 4           deems appropriate, up to the statutory maximum penalties;
- 5           e. the Court is required to consider the applicable range set forth
- 6           in the United States Sentencing Guidelines, but may depart
- 7           upward or downward under certain circumstances; and
- 8           f. the Court may reject recommendations made by the United
- 9           States or Defendant, and that will not be a basis for Defendant
- 10          to withdraw from this Plea Agreement or Defendant's guilty
- 11          plea.

12         4. Potential Immigration Consequences of Guilty Plea

13         If Defendant is not a citizen of the United States, Defendant understands the  
14 following:

- 15           a. pleading guilty in this case may have immigration
- 16           consequences;
- 17           b. a broad range of federal crimes may result in Defendant's
- 18           removal from the United States, including the offense to which
- 19           Defendant is pleading guilty;
- 20           c. removal from the United States and other immigration
- 21           consequences are the subject of separate proceedings; and
- 22           d. no one, including Defendant's attorney or the Court, can predict
- 23           with absolute certainty the effect of a federal conviction on
- 24           Defendant's immigration status.

25         Defendant affirms that Defendant is knowingly, intelligently, and voluntarily  
26         pleading guilty as set forth in this Plea Agreement, regardless of any immigration  
27         consequences that Defendant's guilty plea may entail.

1       5.     Waiver of Constitutional Rights

2           Defendant understands that by entering this guilty plea, Defendant is  
3           knowingly and voluntarily waiving certain constitutional rights, including the  
4           following:

5           a.     the right to a jury trial;  
6           b.     the right to see, hear and question the witnesses;  
7           c.     the right to remain silent at trial;  
8           d.     the right to testify at trial; and  
9           e.     the right to compel witnesses to testify.

10          While Defendant is waiving certain constitutional rights, Defendant  
11          understands that Defendant retains the right to be assisted by an attorney through  
12          the sentencing proceedings in this case and any direct appeal of Defendant's  
13          conviction and sentence, and that an attorney will be appointed at no cost if  
14          Defendant cannot afford to hire an attorney.

15          Defendant understands and agrees that any defense motions currently  
16          pending before the Court are mooted by this Plea Agreement, and Defendant  
17          expressly waives Defendant's right to bring any additional pretrial motions.

18        6.     Elements of the Offense

19          The United States and Defendant agree that in order to convict Defendant of  
20          Felon in Possession of Ammunition, in violation of 18 U.S.C.  
21          §§ 922(g)(1),924(a)(2), the United States would have to prove the following  
22          beyond a reasonable doubt.

23           a. *First*, on or about January 19, 2022, in the Eastern District of  
24           Washington, Defendant, knowingly possessed ammunition to wit:  
25           1. eighty-four (84) rounds of .40 caliber ammunition, head  
26            stamped "Winchester 40 S&W";  
27           2. twenty-two (22) rounds of .40 caliber ammunition, head  
28            stamped "R. P 40 S&W";

- 1       3. seven (7) rounds of .40 caliber ammunition, head stamped  
2       “\*---\* 40 S&W”;
- 3       4. one (1) round of .40 caliber ammunition, head stamped “F C  
4       40 S&W” and
- 5       5. one (1) round of .40 caliber ammunition, head stamped  
      “PROLOAD 40 S&W”,  
6       b. *Second*, all the ammunition had at some point in time prior to  
7       January 19, 2022, been shipped or transported in interstate or  
8       foreign commerce;
- 9       c. *Third*, at the time the Defendant possessed the ammunition the  
10      Defendant had been convicted of a crime punishable by  
11      imprisonment for a term exceeding one year; and
- 12      d. *Fourth*, at the time the Defendant possessed the ammunition, the  
13      Defendant knew he had been convicted of a crime punishable by  
14      imprisonment for a term exceeding one year.

15      7. Factual Basis and Statement of Facts

16      The United States and Defendant stipulate and agree to the following: the  
17      facts set forth below are accurate; the United States could prove these facts beyond  
18      a reasonable doubt at trial; and these facts constitute an adequate factual basis for  
19      Defendant’s guilty plea.

20      The United States and Defendant agree that this statement of facts does not  
21      preclude either party from presenting and arguing, for sentencing purposes,  
22      additional facts that are relevant to the Sentencing Guidelines computation or  
23      sentencing, unless otherwise prohibited in this Plea Agreement.

24      On December 8, 2021, Defendant was convicted, in the United States  
25      District Court, District of Montana, of Sale or Receipt of Stolen Vehicles. This is  
26      a felony offense. The judgment notified the Defendant that he could not possess a  
27      firearm or ammunition.

28      On January 19, 2022, officers with the Spokane Police Department (SPD)  
      responded to the scene of a hit and run accident. The Defendant was identified

1 as the driver of the vehicle. The Defendant lost control of his vehicle near the  
2 intersection of N. Addison Street and East Francis Ave. in Spokane, WA. Two  
3 citizen witnesses saw the Defendant run through about 40 feet of fencing and  
4 running over a fire hydrant. Defendant got out of the car to check the damage so  
5 both witnesses could provide a description of the driver and vehicle.

6 SPD Officer Skay located the vehicle and Defendant a few blocks away.  
7 Skay noticed the vehicle was disabled and parked approximately four feet from the  
8 curb. Skay walked around the vehicle to check out the damage. While  
9 walking around the vehicle he was using his flashlight to determine whether there  
10 were other persons in the vehicle and to determine the full extent of the damage to  
11 the vehicle. The sunroof of the vehicle lost all of its glass as a result of the  
12 accident. While looking thru the backseat driver's side window Skay observed,  
13 in plain view, what he thought was the lower half of an assault rifle and boxes  
14 of ammunition.

15 When SPD Officer Kerncamp arrived on the scene she briefed Officer Skay  
16 about the damage caused by the accident. Kerncamp then advised the Defendant o  
17 of his *Miranda* rights, and the Defendant agreed to talk to the police. Defendant  
18 said he had just dropped off a female friend, was tired and fell asleep while  
19 driving. He woke up when his car crashed into the fence. He got out of the  
20 car to survey the damage. He then panicked and took off without thinking. He  
21 told the police he had insurance and was on federal probation. Both officers noted  
22 that the Defendant did not appear to be under the influence of drugs or alcohol.  
23 Defendant was eventually cited for the hit and run and allowed to go home. The  
24 hit and run charge was subsequently dismissed.

25 Officer Kerncamp arrived shortly after Officer Skay observed what he  
26 thought was an assault rifle, and ammunition in plain view in the back seat of the  
27 vehicle while examining the damage to Defendant's vehicle. After determining  
28 the Defendant was prohibited from having a firearm and/or ammunition,

1 Kerncamp read the Defendant his *Miranda* rights a second time. Defendant  
2 stated that the suspected rifle was an airsoft BB gun. This was later confirmed  
3 during the search of Defendant's vehicle. Defendant further advised the  
4 officers that he recovered the ammunition from a jobsite and knew he should not  
5 have possessed the ammunition, but did not want to leave the ammunition at the  
6 job site for safety reasons.

7 Officer Skay obtained a state search warrant for Defendant's vehicle. He  
8 located and seized 115 rounds of .40 caliber ammunition bearing a variety of head  
9 stamps.

10 ATF SA Mario Piergallini, a nexus expert, examined all the ammunition and  
11 determined that none of the ammunition was manufactured in Washington state  
12 and therefore, had traveled in interstate commerce prior to the Defendant  
13 possessing the ammunition on January 19, 2022.

14       8. The United States' Agreements

15       The United States Attorney's Office for the Eastern District of Washington  
16 agrees not to bring additional charges against Defendant based on information in  
17 its possession at the time of this Plea Agreement that arise from conduct that is  
18 either charged in the Indictment or identified in discovery produced in this case,  
19 unless Defendant breaches this Plea Agreement before sentencing.

20       9. United States Sentencing Guidelines Calculations

21       Defendant understands and acknowledges that the United States Sentencing  
22 Guidelines ("U.S.S.G." or "Guidelines") apply and that the Court will determine  
23 Defendant's advisory range at the time of sentencing, pursuant to the Guidelines.  
24 The United States and Defendant agree to the following Guidelines calculations.

25           a. Base Offense Level

26       The United States and the Defendant agree that the base offense level for  
27 Felon in Possession of Ammunition is 14. U.S.S.G. § 2K2.1(a)(6).

28           b. Special Offense Characteristics

1       The United States and the Defendant agree that there are no Special Offense  
2 Characteristics.

3                   c.     Acceptance of Responsibility

4       The United States will recommend that Defendant receive a downward  
5 adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a), (b), if  
6 Defendant does the following:

- 7                   i.     accepts this Plea Agreement;
- 8                   ii.    enters a guilty plea at the first Court hearing that takes  
9                      place after the United States offers this Plea Agreement;
- 10                  iii.   demonstrates recognition and affirmative acceptance of  
11                     Defendant's personal responsibility for Defendant's  
12                     criminal conduct;
- 13                  iv.    provides complete and accurate information during the  
14                     sentencing process; and
- 15                  v.     does not commit any obstructive conduct.

16       The United States and Defendant agree that at its option and on written  
17 notice to Defendant, the United States may elect not to recommend a reduction for  
18 acceptance of responsibility if, prior to the imposition of sentence. If Defendant is  
19 charged with, or convicted of, any criminal offense, or if Defendant tests positive  
20 for any controlled substance.

21                   d.     No Other Agreements

22       The United States and Defendant have no other agreements regarding the  
23 Guidelines or the application of any Guidelines enhancements, departures, or  
24 variances. Defendant understands and acknowledges that the United States is free  
25 to make any sentencing arguments it sees fit, including arguments arising from  
26 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed  
27 pursuant to this Agreement, and Defendant's relevant conduct.

28                   e.     Criminal History

1       The United States and Defendant have no agreement and make no  
2 representations about Defendant's criminal history category, which will be  
3 determined by the Court after the United States Probation Office prepares and  
4 discloses a Presentence Investigative Report.

5           10. Incarceration

6       The United States agrees to recommend a sentence no higher than the low  
7 end of the Guidelines, as determined by the Court.

8       The United States further agrees to recommend that any sentence imposed  
9 based upon the Defendant's violation of his Probation in case number 2:22-CR-  
10 00012-TOR-1, run concurrently to any sentence imposed in this case. 2:22-CR-69-  
11 TOR.

12       Defendant may recommend any legal sentence.

13           11. Supervised Release

14       The United States and Defendant each agree to recommend 3 years of  
15 supervised release. Defendant agrees that the Court's decision regarding the  
16 conditions of Defendant's Supervised Release is final and non-appealable; that is,  
17 even if Defendant is unhappy with the conditions of Supervised Release ordered by  
18 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty  
19 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,  
20 sentence, or any term of Supervised Release.

21       The United States and Defendant agree to recommend that in addition to the  
22 standard conditions of supervised release imposed in all cases in this District, the  
23 Court should also impose the following conditions:

24           a.       The United States Probation Officer may conduct, upon  
25 reasonable suspicion, and with or without notice, a search of  
26 Defendant's person, residences, offices, vehicles, belongings,  
27 and areas under Defendant's exclusive or joint control.

- 1                   b. Defendant shall participate and complete such drug testing and
- 2                   drug treatment programs as the Probation Officer directs.
- 3                   c. Defendant shall complete mental health evaluations and
- 4                   treatment, including taking medications prescribed by the
- 5                   treatment provider. Defendant shall allow reciprocal release of
- 6                   information between the Probation Officer and the treatment
- 7                   provider. Defendant shall contribute to the cost of treatment
- 8                   according to the Defendant's ability.

9                  12. Criminal Fine

10                 The United States and Defendant may make any recommendation  
11 concerning the imposition of a criminal fine. Defendant acknowledges that the  
12 Court's decision regarding a fine is final and non-appealable; that is, even if  
13 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for  
14 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea  
15 Agreement, or appeal Defendant's conviction, sentence, or fine.

16                 13. Judicial Forfeiture

17                 Defendant agrees to voluntarily forfeit and relinquish all right, title and  
18 interest he has in the following listed ammunition to the United States:

- 19                 - eighty-four (84) rounds of .40 caliber ammunition, head stamped  
20                 "Winchester 40 S&W",
- 21                 - twenty-two (22) rounds of .40 caliber ammunition, head stamped "R. P  
22                 40 S&W",
- 23                 - seven (7) rounds of .40 caliber ammunition, head stamped "\*----\* 40  
24                 S&W" one (1) round of .40 caliber ammunition, head stamped "F C 40  
25                 S&W", and
- 26                 - one (1) round of .40 caliber ammunition, head stamped "PROLOAD 40  
27                 S&W".

28                 Defendant stipulates that he is the sole owner of the assets listed above and  
that no one else has an interest in these assets.

1       Defendant acknowledges that the ammunition is subject to forfeiture to the  
2 United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), as property  
3 involved or used in the commission of the offense Felon in Possession of  
4 Ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), as charged in the  
5 Indictment.

6       The Defendant agrees to take all steps as requested by the United States to  
7 pass clear title to the ammunition to the United States and to testify truthfully in  
8 any forfeiture proceeding. Defendant agrees to hold all law enforcement agents and  
9 the United States, its agents, and its employees harmless from any claims  
10 whatsoever arising in connection with the seizure, forfeiture and disposal of any  
11 asset covered by this agreement.

12       The Defendant further agrees to waive all constitutional and statutory  
13 challenges in any manner (including direct appeal, habeas corpus, or any other  
14 means) to any forfeiture carried out in accordance with this Plea Agreement on any  
15 grounds, including that the forfeiture constitutes an excessive fine or punishment.  
16 Defendant knowingly and voluntarily waives his right to a jury trial on the  
17 forfeiture of the asset(s). Defendant waives oral pronouncement of forfeiture at the  
18 time of sentencing, and any defects that may pertain to the forfeiture.

19       The Defendant waives further notice of any federal, state or local  
20 proceedings involving the forfeiture of the seized assets the Defendant is agreeing  
21 to forfeit in this Plea Agreement.

22       14. Mandatory Special Penalty Assessment

23       Defendant agrees to pay the \$100 mandatory special penalty assessment to  
24 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.  
25 § 3013.

26       15. Restitution

27       The United States and Defendant agree that no restitution is owing based  
28 upon the facts of this case.

1       16. Payments While Incarcerated

2       If Defendant lacks the financial resources to pay the monetary obligations  
3 imposed by the Court, Defendant agrees to earn money toward these obligations by  
4 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

5       17. Additional Violations of Law Can Void Plea Agreement

6       The United States and Defendant agree that the United States may, at its  
7 option and upon written notice to the Defendant, withdraw from this Plea  
8 Agreement or modify its sentencing recommendation if, prior to the imposition of  
9 sentence, Defendant is charged with or convicted of any criminal offense or tests  
10 positive for any controlled substance.

11       18. Waiver of Appeal Rights

12       Defendant understands that Defendant has a limited right to appeal or  
13 challenge Defendant's conviction and the sentence imposed by the Court.

14       Defendant expressly waives all of Defendant's rights to appeal Defendant's  
15 conviction and the sentence the Court imposes.

16       Defendant expressly waives Defendant's right to appeal any fine, term of  
17 supervised release, or restitution order imposed by the Court.

18       Defendant expressly waives the right to file any post-conviction motion  
19 attacking Defendant's conviction and sentence, including a motion pursuant to 28  
20 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from  
21 information not now known by Defendant and which, in the exercise of due  
22 diligence, Defendant could not know by the time the Court imposes sentence.

23       Nothing in this Plea Agreement shall preclude the United States from  
24 opposing any post-conviction motion for a reduction of sentence or other attack  
25 upon the conviction or sentence, including, but not limited to, writ of habeas  
26 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

1       19. Compassionate Release

2       In consideration for the benefits Defendant is receiving under the terms of  
3 this Plea Agreement, Defendant expressly waives Defendant's right to bring any  
4 motion for Compassionate Release other than a motion arising from one of the  
5 specific bases set forth in this paragraph of this Plea Agreement. The United States  
6 retains the right to oppose, on any basis, any motion Defendant files for  
7 Compassionate Release.

8       The only bases on which Defendant may file a motion for Compassionate  
9 Release in the Eastern District of Washington are the following:

10      a. Medical Condition of Defendant

11       i.      Defendant is suffering from a terminal illness (i.e., a  
12             serious and advanced illness with an end of life  
13             trajectory). A specific prognosis of life expectancy (i.e.,  
14             a probability of death within a specific time period) is not  
15             required. Examples include metastatic solid-tumor  
16             cancer, amyotrophic lateral sclerosis (ALS), end-stage  
17             organ disease, and advanced dementia; or  
18        ii.     Defendant is suffering from a serious physical or medical  
19             condition, a serious functional or cognitive impairment,  
20             or deteriorating physical or mental health because of the  
21             aging process that substantially diminishes the ability of  
22             the defendant to provide self-care within the environment  
23             of a correctional facility and from which Defendant is not  
24             expected to recover.

25      b. Age of Defendant

26       i.      Defendant is at least 65 years old, is experiencing a  
27             serious deterioration in physical or mental health because  
28             of the aging process; and has served at least 10 years or

75 percent of Defendant's term of imprisonment,  
whichever is less; or

- ii. Defendant is at least 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which Defendant is imprisoned.

### c. Family Circumstances

- i. The caregiver of Defendant's minor child or children has died or become incapacitated, and Defendant is the only available caregiver for Defendant's minor child or children; or
- ii. Defendant's spouse or registered partner has become incapacitated, and Defendant is the only available caregiver for Defendant's spouse or registered partner.

d. Subsequent Reduction to Mandatory Sentence

- i. Defendant pleaded guilty to an offense which, on the date of Defendant's guilty plea, carried a mandatory minimum sentence; and
- ii. after the entry of judgment, the length of the mandatory minimum sentence for Defendant's offense of conviction was reduced by a change in the law; and
- iii. the application of the reduced mandatory minimum sentence would result in Defendant receiving a lower overall sentence.

e. Ineffective Assistance of Counsel

- i. Defendant seeks Compassionate Release based on a claim of ineffective assistance of counsel arising from information that Defendant both

1. did not know at the time of Defendant's guilty plea, and
2. could not have known, in the exercise of due diligence, at the time the Court imposed sentence.

20. Withdrawal or Vacatur of Defendant's Plea

Should Defendant successfully move to withdraw from this Plea Agreement or should Defendant's conviction be set aside, vacated, reversed, or dismissed under any circumstance, then:

- a. this Plea Agreement shall become null and void;
- b. the United States may prosecute Defendant on all available charges;
- c. The United States may reinstate any counts that have been dismissed, have been superseded by the filing of another charging instrument, or were not charged because of this Plea Agreement; and
- d. the United States may file any new charges that would otherwise be barred by this Plea Agreement.

The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

Defendant agrees to waive any objections, motions, and/or defenses Defendant might have to the United States' decisions to seek, reinstate, or reinitiate charges if a count of conviction is withdrawn, set aside, vacated, reversed, or dismissed, including any claim that the United States has violated Double Jeopardy.

Defendant agrees not to raise any objections based on the passage of time, including but not limited to, alleged violations of any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

## 21. Integration Clause

The United States and Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and Defendant, and no other promises, agreements, or conditions exist between the United States and Defendant concerning the resolution of the case.

This Plea Agreement is binding only on the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state, or local authorities.

The United States and Defendant agree that this Agreement cannot be modified except in a writing that is signed by the United States and Defendant.

## Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

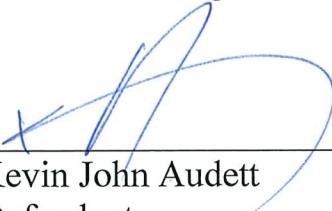
Vanessa R. Waldref  
United States Attorney

Earl A. Hicks  
Earl A. Hicks  
Assistant United States Attorney

12-07-2022  
Date

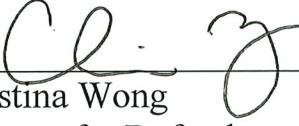
## PLEA AGREEMENT - 16

I have read this Plea Agreement and I have carefully reviewed and discussed every part of this Plea Agreement with my attorney. I understand the terms of this Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and voluntarily. I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. No one has threatened or forced me in any way to enter into this Plea Agreement. I agree to plead guilty because I am guilty.

  
Kevin John Audett  
Defendant

12/7/22  
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept Defendant's guilty plea.

  
Christina Wong  
Attorney for Defendant

12/7/22  
Date